Mr. Bjork also criticized the cut-off for allocation of top management salary being set at 48 beds. He contended that this provision as well as other top management provisions deny the facilities an opportunity to take advantage of economies of scale. While this may be a desirable goal from a management or economic standpoint, it is clearly not the goal for the reimbursement program for ICf's/MR. The Welsch Consent Decree as well as the LAC report and many other sources recognize that the desirable and suitable setting for mentally retarded people is a small group setting. If this rule creates disincentives for large facilities, then it is in keeping with that programmatic goal.

Bjork's testimony is based on his experience advising other health care organizations. He is transferring that experience to the ICF/MR industry. This is entirely inconsistent with Mary Martin's testimony which attempted to distinguish the ICF's/MR from other health care related organizations. Mr. Bjork has never served as a management consultant for any individual ICF/MR in Minnesota. He has never studied the management structure of any individual facility and has relied solely upon the representations of the owners and the data which they supplied him.

Mr. Bjork argues that the administrative cost limit is sufficient and that further limits on top management are unnecessary. The fact that the administrative cost of a facility is limited does not mean the State has no interest in the proper use of administrative funds. The State believes that the administrative functions in a facility are necessary to ensure good programs for the residents. The State does not want to see all of the administrative allowances used to pay top management salaries at the expense of other administrative functions necessary to the proper management of the facility.

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Item G. Mr. Bjork also questioned the use of the Consumer Price Index to update figures for compensation. The State maintains that the levels of compensation resulting from the application of its method is reasonable in today's market. The fact that the increases in the health care industry have exceeded the Consumer Price Index led to the situation where Federal and State governments have had to take steps to control costs.

The enabling legislation, Minnesota Statutes 256B.501, subd. 3, specifically directs the Department not to allow operating cost increases that do not correspond to increases in other areas of the economy.

The Department wishes to retain this subpart as published.

Comment 19. Part 9553.0035, subpart 15. Ms. Harris raised questions concerning the necessity of the standards established in this subpart. The principles are necessary in order to have criteria for evaluating costs for rate setting purposes. The criteria must be taken in the context of the total rule as clear expressions of standards for evaluating costs for rate setting purposes. 42 CFR, section 405.451 establishes the same standards as item A when it uses the terms "necessary and proper costs". Rule 52 used the same standards. The department believes that this subpart is necessary and reasonable in order to administer the Medical Assistance program and wishes to retain it as published.

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Comment 20. Part 9553.0036. Several commentors (Rowland, Searles, and Johnson) brought up several points regarding non-allowable costs. The Statement of Need and Reasonableness (pages 30 to 35), establishes the need for and reasonableness of each of these provisions. The department wishes to retain all provisions under Part 9553.0036 as published. However, the Department feels that some comments offered during the hearing require additional clarification. The first of these comments begins on page 168 of the August 22 transcript. There, Ms. Rowland argues that the cost of personal need items such as personal clothing, should be an allowable cost on the basis that the facility may be in violation of Minnesota Statutes 626.556 and 626.557. The personal care need allowance is established by the legislature at $40 per month under M.S. 256B.35. Ms. Rowland seems to imply that the provision of necessary food, shelter, health care or supervision is also considered "personal need items". It is important to clarify that only personal clothing is in that category. She gives the example of a resident who needs a winter coat, who cannot afford it. The Department believes that if the resident or the resident's family cannot afford the purchase of a winter coat, there are sufficient places in the community, such as churches, and other charitable organizations, that would donate the coat.

42 CFR 435.832 specifies that a protected personal needs allowance for "clothing and other personal needs" must be provided and cannot be applied to the cost of care. Health Care Finance Administration reimbursement specialists who were contacted on this matter indicated this provision provides for monies to be available for personal needs and, therefore, these costs must not also be reimbursed through Medical Assistance.

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It may very well be that the $40 per month for a personal needs allowance is insufficient, given today's prices. However, the remedy is not in this Rule, but in bringing the issue to the attention of the Legislature. The Medical Assistance Program does not reimburse for personal needs items.

The next item that requires clarification is on page 171 of the August 22 transcript, with respect to item R, on page 24 of the proposed rule. Ms. Rowland's examples regarding occasional trips to a DAC because a resident missed the bus or had an appointment would be considered allowable costs as they are not "regular" travel costs to attend day activity care centers.

Comment 21. Part 9553.0040, subpart 1. Ms. Rowland suggests that purchased services be added under program operating costs in order to cover purchased services such as dental hygienist or behavior analyst. The proposed rule already permits the classification of this cost under subpart 1, item C, as consultant services. However, the Department agrees with Ms. Rowland that the rule should be clarified and proposes amending the rule by inserting on line 15, page 26, after the word "consultant", "or purchased". Ms. Rowland also suggests adding to the specific cost categories the recruitment costs for staff employed in such categories. The Department believes that costs of recruitment are appropriately classified as administrative costs and, therefore, wishes to retain this provision as published.

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Mr. Clyde Johnson, representing Duluth Regional Care Center, requested clarification of subpart 1, item G, regarding the classification of resident transportation costs for program purposes when a personal vehicle is used. The Department agrees that clarification is necessary and proposes the following amendment: On page 26, line 28, after the word "costs", insert "or reimbursement for mileage for the use of a personal vehicle."

Comment 22. Part 9553.0040, General. Several commentors (Rowland, C. Johnson, Sajevic, and Mark Larson) spoke about the need for a new cost category to separate certain costs from those subject to limits. Although the Department does not agree entirely with the new category as proposed by Ms. Rowland, it believes that some suggestions regarding real estate property taxes and special assessments, insurance for real estate and professional liability, and licensing fees charged by the Department of Health and the Department of Human Services should be segregated into a separate cost category where no limits are applied. Therefore, the Department proposes the following amendment: On page 28, line 10, after the word "insurance", insert "except as provided in subpart 6"; on page 29, delete lines 35 and 36; on page 30, line 1, delete "D" and insert "C", and after the word "payments;" insert "and"; on page 30, line 2, delete "E" and insert "D", and after "BB" delete ";" and insert "."; on page 30, delete lines 3, 4, and 5 and insert "Subp. 6. Special operating costs. The facility costs listed in this subpart are included in the special operating cost category:

A. Special assessments and real estate taxes;

B. License fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;

C. Real estate insurance; and

D. Professional liability insurance."

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On page 39, line 7, insert:

"Subpart 16. Reporting real estate taxes, special assessments and insurance. The facility shall submit a copy of its statement of real estate taxes payable for the calendar year in which the rate year begins and a copy of the invoices for the real estate insurance and professional liability insurance for coverage during the rate year by June 30 each year. Except as provided in this subpart, the commissioner shall disallow the costs of real estate taxes, special assessments, real estate insurance, and professional liability insurance, if the documentation is not submitted by July 31. The disallowance shall remain in effect until the facility provides the documentation and amends the cost report under subpart 14. The historical operating cost for the special operating costs during the reporting year must be shown on the cost report."

On page 45, insert after line 26, "9553.0051 DETERMINATION OF THE SPECIAL OPERATING COST PAYMENT RATE. The total allowable special operating costs in Part 9553.0040, subpart 6 as adjusted by part 9553.0041, subpart 16 must be divided by the greater of resident days or 85% of licensed capacity days to compute the special operating cost payment rate."

On page 2, line 19, delete "5" and insert "6"; on page 8, line 5, after the words "payment rate," insert "the special operating cost payment rate."

On page 59, line 31, after "payment rate", insert ",the special operating cost payment rate."

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On page 62, line 11, delete "and"; after line 11, insert "(4) the settle-up special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 80 percent of licensed capacity days; and";

On line 19, delete "B" and insert "C"; after line 36, insert, "B. The special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 85 percent of licensed capacity days."

On page 63, line 1, delete "B" and insert "C".

The Department believes that the separation of any other costs into the special operating cost category is inappropriate and wishes to retain the proposed rule as published, except for the proposed amendments.

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State Rep. In. V.2. Date Eff. 1-1-86

Comment 23. Part 9553.0041, subpart 1. Commentors (C. Johnson, Martin, Lannigan, Rowland, Lokhorst and Mulloy) raised several issues regarding the change in reporting year and the cost of certified audits. The issues can be summarized as follows:

1. Cost of certified audits, including effect on administration limit;
2. Cost of changing fiscal year;
3. Department's administration of common reporting year;
4. Inconvenience to CPA's of common reporting year; and
5. Choice of reporting year end.

The commentors argued that because certified audits haven't been a requirement in the past, the cost of such audits for facilities or provider groups with more than 48 beds may not be reflected in the historical cost of the facility. Because the proposed reimbursement system is based on historical costs, some providers would not be reimbursed for this cost in the first rate year. Additionally, because these costs were not taken into account in the computation of the administrative limit, the limit would be depressed. The Department agrees that these costs must be recognized and proposes the amendments as stated in Comment 34. The proposed amendments in Comment 34 permits providers to be reimbursed for the cost of a certified audit performed during or with respect to the reporting year, ending Dec. 31 1985, even when a provider does not have a historical base for this cost. It removes the costs of certified audits from historical costs and creates a mechanism whereby a provider can separately submit actual costs of a certified audit to the Department. These costs will be limited to 115 percent of the average cost

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per licensed bed. The limitation is necessary to meet the legislative mandate of 256B.501, Sub. 3, to limit administrative costs. For the rate year beginning October 1, 1986 these costs are exempt from the administrative limit because the fair development of the administrative limitation requires that all providers have a similar cost base with regard to costs required by the Department.

The commentors are concerned with the common reporting year requirement. In instances when a provider's fiscal year end does not coincide with the reporting year established in the proposed rule. They fear that it will be necessary to change the facility's fiscal year to the common reporting year. The Department believes that the proposed rule does not require such changes, but agrees that clarification is necessary. Therefore, the Department proposes the following amendment:

One page 31, line 5, after the word "opinion", insert "If the financial statements are not sufficiently detailed or the facility's fiscal year is different from the reporting year, the facility shall provide supplemental information that reconciles costs on the financial statements with the cost report.".

The commentors questioned the choice of December 31 as the date of the common reporting year. Mr. Lannigan stated that the Department's statistics concerning the number of facilities with fiscal years ending on December 31 were inaccurate. The Statement of Need and Reasonableness stated that 65 % of providers presently have a December 31 year end. The Department agrees that this statement is in error. However, more providers have a December 31 year

end than have any other single year end. The Department accepts Mr. Lanigan's 36.7 percent figure as correct but would point out that this remains the highest percentage. The next highest percentage of providers with a common fiscal year end is June 30, at approximately 23 percent. Therefore, the Department maintains that the choice of a December 31 reporting year-end is the least disruptive to the greatest number of providers, and wishes to retain the proposed provision as published.

Additionally, Ms. Martin introduced copies of the Rule 53 Advisory Committee's meeting minutes. (Public Exhibit.) It appears that some of the meeting minutes were omitted. The Department would, therefore, like to complete the record by adding the missing minutes for November 16, 1985 and December 11, 1985. (Exhibit QQ.) It should also be noted that it was, in fact, Ms. Martin who suggested staggering the reporting year and rate year. The advisory committee members thoroughly discussed the change and agreed that it seemed workable. (December 11, 1985, Rule 53 Advisory Committee, Special Meeting Minutes.)

Comment 24. Part 9553.0041, subpart 2, item I and subpart 3, item C. Mr. Lanigan raised the concern that landlords may be unwilling to provide information on the lessors asset debt costs. The Department believes that this information is essential to determine whether the lease is cost effective. This can only be determined when access to that information is provided. Additionally, since lease agreements are contracts, access to this information can be included in the lease agreement. Also, the lease cost may increase as a result of a sale or refinancing of the capital asset by the lessor, The Department believes that such transactions regardless of when the lease was entered into, result in the circumvention of provisions in Part